



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

SETMU

ACCOMMODATION AND CONFERENCING AGREEMENT

entered into and between

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

THE SERVICE PROVIDER

[DRAFT AGREEMENT]

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1. **PREAMBLE**

- 1.1. The Student Equity and Talent Management Unit (“**SETMU**”) is a part of the University that facilitates the pre-University “Targeting Talent Programme” generally two to three times of times a Year.
- 1.2. SETMU seeks to be a leader in identifying, recruiting and developing pre-University learners.
- 1.3. SETMU requires accommodation and conferencing services for pre-University learners at any one of an expected number of Events during the period of this Agreement.

2. **DEFINITIONS**

Unless the context clearly indicates otherwise, the following terms will bear the following meanings:

- 2.1. **“Agreement Amendment”** any change to this Agreement agreed, documented and signed by both Parties. Any Agreement Amendment must be signed by a representative of the University who is duly authorised to sign Agreement Amendments on behalf of the University. If an Agreement Amendment is not signed by such an authorised person the amendment is not binding on the University
- 2.2. **“Agreement”** this entire agreement, including all annexures and schedules and/or Agreement Amendments
- 2.3. **“Business Day”** any day which is not a Saturday, Sunday or official public holiday in South Africa
- 2.4. **“CPI”** the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it, which

annual change will be determined by comparing the most recently published index with the average index published over the 12 (twelve) months preceding the anniversary of the Effective Date, and applying the lower of the two compared indices

- 2.5. **“Effective Date”** [insert], notwithstanding Signature Date
- 2.6. **“Event Card”** in respect of each Event held under this Agreement the Parties shall conclude an Event Card, to which the terms of this Agreement shall apply, in the form as attached hereto as Annexure B
- 2.7. **“Event”** means the approved event or function to be held as indicated in the relevant Event Card to which this Agreement relates
- 2.8. **“Fees”** the fees charged by the Service Provider to the University for an Event at the rates and charges as specified in Annexure C
- 2.9. **“Month”** a calendar month, being one of the 12 (twelve) months from January to December in any year
- 2.10. **“Parties”** collectively, the University and the Service Provider, and **“Party”** means either of them
- 2.11. **“Personnel”** of a Party includes employees, partners, directors, agents, consultants, contractors, subcontractors or other representatives of a Party utilised in this Agreement
- 2.12. **“Purchase Order”** a purchase order issued by the University

- 2.13. **“Scope of Work”** means the scope of work describing the Services as detailed in Annexure A
- 2.14. **“Service Provider”** [insert] with registration number: [insert] a company duly registered and incorporated in accordance with the laws of South Africa
- 2.15. **“Services”** means the accommodation, food and beverages, and conferencing facilities and services, including all services complementary and ancillary thereto, for all Events forming the subject matter of this Agreement as described in the Scope of Work
- 2.16. **“Signature Date”** the date on which this Agreement is signed by the last Party to do so
- 2.17. **“Termination Date”** means [insert]
- 2.18. **“University”** the University of the Witwatersrand, Johannesburg, a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997
- 2.19. **“Variation Order”** a minor scope change to the Services which has been requested by either Party and accepted by both Parties and is too small to warrant an Agreement Amendment. A Variation Order will be deemed to be any variation to the Agreement that will result in a change equal to or less than R50 000 (fifty thousand rand) per annum or such other amount that the University’s chief financial officer, vice-chancellor or his nominee allow the Service Provider, in writing from time to time, in Fees

- 3.1.6. any reference to the provisions of law and any similar reference of general application will be construed to include both legislation and the common law, and any reference to legislation includes any statute, any regulations passed under any statute, as well as any public notice, ruling or similar legislative instrument passed or approved by a relevant authority with the requisite authority;
- 3.1.7. save where specifically provided otherwise, references to statutory provisions are to be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the Signature Date) from time to time and will include any provisions of which they are re-enactments (whether with or without modification);
- 3.1.8. the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it;
- 3.1.9. wherever provision is made for the giving or issuing of any notice, application, submission, request, decision, consent, permission, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any person, unless otherwise specified, such notice, decision, consent, permission, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination will be in writing and the words "notify", "apply", "submit", "request", "decide", "consent", "permit", "accept", "agree", "endorse", "approve", "certify", "instruct" or "determine" and other related expressions are to be construed accordingly;
- 3.1.10. references to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or other form;
- 3.1.11. when any number of days is prescribed, it will be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the first Business Day thereafter;
- 3.1.12. where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail;
- 3.1.13. expressions defined in this Agreement will bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions.
- 3.2. If any provision contained in this Agreement is inconsistent with any document relevant to the Agreement issued by either Party, this Agreement will prevail.

- 3.3. If any definition contains a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the definition clause, effect will be given to it as if it were a substantive provision in the body of the Agreement.
- 3.4. Each Party will ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, exercise of discretion (whether sole or otherwise) or similar act required by it from another Party in respect of this Agreement will be applied for or requested promptly.
- 3.5. Whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.
- 3.6. The expiry or termination of the Agreement will not affect such of the provisions of the Agreement as expressly provide that they will operate after any such expiry or termination or which of necessity will continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 3.7. The rule that an agreement will be interpreted against the Party who drafted it will not apply to this Agreement.
- 3.8. Where there is a conflict between this Agreement and any Event Card, the following order of priority shall apply to resolve the conflict:
- 3.8.1. The Agreement; and then
- 3.8.2. The Event Card.

4. **APPOINTMENT**

- 4.1. The University appoints the Service Provider to provide the Services, and the Service Provider accepts this appointment.
- 4.2. The Service Provider acknowledges that nothing contained in this Agreement will oblige the University to procure a minimum amount of, or any, Services from the Service Provider.
- 4.3. The Service Provider will operate in all respects as an independent contractor. Nothing in the Agreement will constitute a partnership between the Parties or constitute either Party an agent of the other Party for any purpose, nor entitle either Party to commit or bind the other Party in any manner.

5. DURATION

- 5.1. This Agreement commences on the Commencement Date and, unless earlier terminated as provided herein, continues until the Termination Date.
- 5.2. Notwithstanding the generality of the provisions of clause 5.1, the University may terminate this Agreement on 1 (one) calendar month's written notice to the Service Provider.
- 5.3. The commencement date and duration of each Event will be stated in the relevant Event Card.
- 5.4. Any Event Card provided in terms of it shall be capable of termination without affecting the validity or enforceability of the remainder of this Agreement or any other Event.
- 5.5. It is acknowledged that certain Event Card's under this Agreement may expire before others, but that the terms of this Agreement shall remain in effect.
- 5.6. Any Event Card's which have already been executed at the time of expiry of this Agreement or delivery of a notice to terminate the Agreement shall continue in full force and effect until their completion and, if necessary, beyond the notice period and for the purposes only of such Event Card the terms and conditions of this Agreement shall continue to apply.

6. PERFORMANCE

- 6.1. The Service Provider agrees:
- 6.1.1. that the Services shall be provided to good industry standards and to the best of the Service Provider's ability using Personnel and sub-contractors possessing the appropriate qualifications, accreditations, skills, training and experience for all tasks assigned to them and it will ensure that its Personnel will use that degree of skill, care and diligence as would be expected from a professional skilled and experienced service provider engaged in the hotel and catering industry as the Service Provider;
- 6.1.2. to ensure that the Services will be fit for the purposes for which these types of Services are commonly required and for any other purposes described in this Agreement;
- 6.1.3. to comply with all applicable legislation including but not limited to the Protection of Personal Information Act 4 of 2013 as amended or substituted, irrespective of the commencement date thereof and ensure that its Personnel comply with the provisions of this clause 6;

- 6.1.4. that it and its Personnel shall comply with all applicable laws during the subsistence of this Agreement. Without limiting the generality of this, the Service Provider will comply with legislation relating to the Services.
- 6.1.5. that it will keep statistics, minutes and other records required by legislation on file and available for inspection by the University's representative;
- 6.1.6. to ensure the prevention of accidents, which includes the safety performance and adherence to sound and safe work standards and practices are essential requirements of this Agreement. Accordingly, the Service Provider and its Personnel will strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the University's codes of practice, policies, procedures or instructions relating to the execution of the Agreement;
- 6.1.7. regardless of clause 15, ensure that there is at all times an uninterrupted power supply for the provision of the Services.
- 6.2. Without prejudice to any of the University's rights under this Agreement or at law, if the Service Provider breaches any of its obligations specified above and fails to remedy such breach within 3 (three) days after receiving a demand that it be remedied, the University will be entitled to claim a penalty in respect of each instance of such breach in an amount of 1% (one percent) of the total contract value per day that the Service Provider is and remains in such breach.
- 6.3. The University will be entitled to elect whether to claim damages or the penalty described above from the Service Provider in the event of a breach specified above and may without prejudice to any other method of recovery deduct the amount of such penalty from any monies in its hands due or which may become due to the Service Provider. The payment or deduction of such penalty will not relieve the Service Provider from its obligation to comply with its obligations specified above or from any of its obligations and liabilities under this Agreement or at law.

7. CHANGE OF SERVICE

The Service Provider may be required to provide accommodation and conferencing facilities and services additional to those stipulated in the Agreement provided that the University furnishes the Service Provider with reasonable prior notification that the additional services are required by the University, and the Parties conclude a Variation Order or an Agreement Amendment as applicable.

8. FEES, BILLING AND ADMINISTRATION

- 8.1. Fees, which are set out in Annexure C, are the only fees that apply.
- 8.2. Fees remain unchanged for the first 12 (twelve) Months of the Agreement. Thereafter, Fees will be adjusted in accordance with the CPI on the first and each subsequent anniversary of the Effective Date and as agreed by the University in writing.
- 8.3. The University will only be liable to the Service Provider for Fees in respect of Services performed following the issue of a Purchase Order by the University.
- 8.4. The Service Provider will ensure that:
- 8.4.1. Services are supplied to the University only following receipt of a Purchase Order;
 - 8.4.2. a separate VAT invoice is issued in respect of each Purchase Order after the Services have been delivered for an Event;
 - 8.4.3. the original VAT invoice is delivered to the University's project manager, and
 - 8.4.4. the VAT invoice is correct and complete. Inter alia, the invoice will:
 - 8.4.4.1. be addressed to the "*University of the Witwatersrand, Johannesburg*";
 - 8.4.4.2. quote the Purchase Order number to which it relates;
 - 8.4.4.3. clearly reflect the VAT registration numbers of both Parties;
 - 8.4.4.4. identify which Services are subject to VAT and which are exempt; and
 - 8.4.4.5. categorise and list the Services with their attendant Fees according to University donor, the names of which will be provided by the University.
- 8.5. The University undertakes to pay all amounts owing to the Service Provider within 30 (thirty) days following receipt of the tax invoice, provided that the Service Provider's tax invoice complies with the requirements of this clause 8.
- 8.6. Payments will be made in South African Rands, by electronic transfer to a bank account in the Republic of South Africa specified by the Service Provider.
- 8.7. If the University has a query regarding any amount specified in a tax invoice, the University will not delay payment of the total amount payable thereunder, but only withhold that portion of payment which is the subject of the query. Any payment withheld which is subsequently

determined to be due and payable to the Service Provider will be made within 10 (ten) Business Days following such determination.

- 8.8. By the 15th (fifteenth) day of the Month following the Month in which the Services have been delivered, the Service Provider agrees to provide the University with an electronic statement detailing all Services invoiced during the previous Month.

9. CONFIDENTIALITY

- 9.1. The Service Provider agrees that it shall keep the existence, nature and the content of the Agreement, the University's personal data as well as any additional University confidential and shall not make any reference to the Agreement, its terms, information or use the University's name, logo or trademark in any public announcement, promotions or any other communication or social-media platform without the University's written consent.

- 9.2. Upon completion or termination of this Agreement or at the request of the University, the Service Provider shall within 7 (seven) days, deliver to the University all confidential information, and all copies thereof, and destroy or erase any confidential information contained in any materials and documentation prepared by or on behalf of the University.

10. INTELLECTUAL PROPERTY

The ownership of background intellectual property of the Agreement will be and remains unaffected hereby. Where one Party grants the other access to its background intellectual property, this is restricted to a non-transferable right of use during the course of this Agreement.

11. LIABILITY AND INDEMNITY

- 11.1. The University has insured itself against the acts and omissions of persons acting on its behalf insofar it is liable in law therefor and its registered students and staff are insured during the course and scope of their registered courses and within the scope of the University's business, where fault can be attributed to the University or its affiliates. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.

- 11.2. Subject to clause 12, the Service Provider will take every reasonable precaution to prevent any loss of life, injury or damage suffered by the University, its guests or invitee, its students, and Personnel, as a result of any act or omission by any employee, contractor, sub-contractor or agent of the Service Provider.

11.3. Subject to clause 12, the Service Provider's maximum liability for any and all proven and awarded damages (whether direct, actual, indirect, special, consequential or otherwise) arising out of the performance of Services under this Agreement will not exceed an amount equal to the value of Service Provider's insurance cover set out in the statement of insurance contained in Annexure D.

11.4. Without prejudice to any other rights the University has in terms of this Agreement or in law, if the Service Provider fails to take out and/or maintain the insurance cover specified in clause 12, the Service Provider's liability in the event of a claim which would otherwise have been covered by such insurance will be unlimited.

11.5. It is a material term that the insurance is renewed annually to the satisfaction of the University's insurance broker.

12. **INSURANCE**

12.1. The Service Provider warrants that it has insured itself against the acts and omissions of persons acting on its behalf during the course and scope of its business, and that it is in possession of the following insurance cover while its Personnel are performing any of the Services. The Service Provider provides the following insurances:

12.1.1. insurance covering its liability to any employees, its agents or representatives as contemplated in the Compensation for Occupational Injuries and Diseases Act no. 130 of 1993;

12.1.2. general and commercial liability insurance, which includes public liability, bodily injury and death, and property damage, and

12.1.3. any other insurance cover that will adequately make provision for any possible losses incurred by, and/or claims against, the University arising from the acts or omissions of the Service Provider, its Personnel and/or invitees.

12.2. The Service Provider will maintain the above insurances, which include indemnities for the liabilities stated above, and which adequately insure against all the liabilities imposed by this Agreement. The Service Provider will provide the University's insurance broker with documentary proof of such insurance cover and written notice of any material changes, cancellations or lapses in such insurance. The University will be entitled to request updated certificates reflecting any changes to current policies such as are contained in Annexure D at any time.

12.3. Without detracting from the liability of the Service Provider as set out in clause 10 or elsewhere in this Agreement, the Service Provider will at all times while this Agreement is in force maintain insurance cover satisfactory to the University's insurance brokers, including public liability insurance which adequately insures against all the liabilities imposed by this Agreement.

12.4. Failure by the Service Provider to comply with the requirements of clauses 12.1, 12.2 or 12.3 will be a material breach of the Agreement.

12.5. The Service Provider agrees to indemnify and hold harmless the University, its guests, its students and Personnel from and against any and all losses, claims, damages, and expenses arising out of the negligent act or omission of the Service Provider, its agents or employees.

13. **DISPUTE RESOLUTION**

13.1. The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.

13.2. Each Party will inform the other in the event of any perceived or potential dispute occurring.

13.3. The Parties' respective representatives will first attempt to resolve the dispute.

13.4. If the Parties fail to resolve the dispute in terms of clause 13.1 within 10 (ten) Business Days after receipt of the notice referred to in clause 13.2, either Party may submit the dispute for resolution to the University's Vice-Chancellor or the Service Provider's Chief Executive Officer or his nominee.

13.5. If the individuals referred to in clause 13.4 are unable to resolve the dispute within a period of 30 (thirty) days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either Party. The costs of mediation will be borne between the Parties equally. The determination by the mediator will be final and binding and must be carried into effect by the Parties.

13.6. If the mediator is unable to resolve the dispute or difference to the mutual satisfaction of the Parties, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.

Please initial here	<i>University</i>	<i>Service Provider</i>

13.7. The provisions of this clause 13 do not prevent either Party seeking urgent interim relief from a court.

14. **BREACH AND TERMINATION**

14.1. If either Party commits a material breach of any of the provisions of this Agreement or an Event Card, the other Party will be entitled to give the defaulting Party notice to remedy the breach.

14.2. If the defaulting Party fails to comply with that notice within 5 (five) Business Days of the receipt of the notice, or such other period that may be appropriate in the circumstances (such as emergency situations where instant response and action are required from the Service Provider), the other Party will be entitled to cancel this Agreement or to claim specific performance, in either event without prejudice to its right to claim damages.

14.3. If the Service Provider fails to comply with the terms of the Agreement, the University will be entitled, without prejudice to any of its rights in terms of this Agreement or in law to:

14.3.1. withhold all payments due and payable to the Service Provider until such time as the Service Provider has complied therewith, to the satisfaction of the University, or

14.3.2. engage a third party to perform the Services which the Service Provider will have failed to perform properly or at all, and the cost thereof may be deducted from any amount that may otherwise be due to the Service Provider under the Agreement.

14.4. If the Service Provider consistently defaults in the performance of its obligations under this Agreement, the University will be entitled to cancel this Agreement without prejudice to any other rights that the University may have in law. For the purposes of this clause 14.4, "consistent default" will mean the failure of the Service Provider to comply with its obligations hereunder on 3 (three) occasions within a period of 60 (sixty) consecutive Business Days.

14.5. If:

14.5.1. the Service Provider is placed in liquidation, either provisionally or finally, whether voluntarily or compulsorily, or

14.5.2. the Service Provider applies for or undergoes business rescue in terms of Chapter 6 of the Companies' Act, 2008, or

14.5.3. a judgment in any competent court is given against the Service Provider, and is not satisfied within a period of 14 (fourteen) days, or

14.5.4. before completion of the Agreement the major portion of the assets of the Service Provider is disposed of or the majority shareholding of the Service Provider is transferred or there is a change of management control of the Service Provider,

then the University will be entitled, but not obliged, to terminate the Agreement forthwith without payment to the Service Provider of any damages whatsoever resulting from such termination.

15. FORCE MAJEURE

15.1. Neither Party is responsible to the other for its failure to perform, for defective performance or for any delay in performing any obligation under the Agreement, if and to the extent that such failure or delay is caused by *force majeure*.

15.2. For the purpose of this Agreement *force majeure* means any circumstance which is beyond the reasonable control of the Party giving notice of *force majeure* (the "**Affected Party**"), including war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, sabotage, blockade, boycott, the exercise of military or usurped power, fire, explosion, storm, flood, rain, drought, wind lightning or any other adverse weather condition, epidemic, quarantine, accident, acts and restraints of government imposition or restrictions of or embargoes on imports or exports.

15.3. The Affected Party will give notice thereof to the other immediately upon the occurrence of an event of *force majeure* and again immediately on the cessation thereof.

15.4. If *force majeure* is of such nature that it will result in impossibility of performance of an obligation going to the root of the Agreement, the Party not so affected (the "**Other Party**") is entitled, on receipt of notice of the *force majeure* event, to terminate the Agreement upon notice to the Affected Party but will not be entitled to recover any damages which it may suffer as a result of such premature termination.

15.5. If *force majeure* delays the performance of the Affected Party's obligations for a continuous period of 60 (sixty) days, the Other Party may, at its option and without further obligation, terminate this Agreement upon notice to the Affected Party.

16. MISCELLANEOUS MATTERS

16.1. Address for correspondence

16.1.1. Any correspondence (other than a notice contemplated in clause 16.2) in connection with this Agreement may be addressed:

16.1.1.1. in the case of the University:

Physical Address

SETMU

University of the Witwatersrand

1 Jan Smuts Avenue

Braamfontein

Johannesburg

Postal Address

Private Bag 3

2050

Electronic mail address: [insert]

Marked for the attention of: [insert]

16.1.1.2. in the case of the Service Provider:

Physical Address

[insert]

Postal Address

[insert]

Electronic mail address: [insert]

Marked for the attention of: [insert]

16.1.2. The notice will be deemed to have been duly given:

16.1.2.1. 7 (seven) days after posting, if posted by registered post to the Party's address in terms of this sub-clause;

16.1.2.2. on delivery, if delivered to the Party's physical address set out in clause 16.1.1;

Please initial here	University	Service Provider

16.1.2.3. on despatch, if sent to the Party's electronic mail address set out in clause 16.1.1 and confirmed by registered letter posted no later than the next business day; unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

16.1.3. A Party may change its address for this purpose to another address in the Republic of South Africa, by notice to the other Party.

16.1.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address in terms of clause 16.1.1.

16.1.5. All notices and correspondence in connection with this Agreement will be in the English language.

16.2. **Address for Service of Legal Documents**

16.2.1. The Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (i.e. their *domicilia citandi et executandi*):

16.2.1.1. for the University:

Office of the Director: Legal Services
5th Floor, Solomon Mahlangu House
1 Jan Smuts Avenue
Braamfontein
Johannesburg

16.2.1.2. for the Service Provider:

[insert]

16.2.2. The notice will be deemed to have been duly given:

16.2.2.1. 7 (seven) days after posting, if posted by registered post to the Party's address in terms of this sub-clause;

Please initial here	University	Service Provider

- 16.2.2.2. on delivery, if delivered to the Party's physical address set out in clause 16.2.1;
- 16.2.2.3. on despatch, if sent to the Party's electronic mail address set out in clause 16.2.1 and confirmed by registered letter posted no later than the next business day; unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 16.2.3. A Party may change its address for this purpose to another address in the Republic of South Africa, by notice to the other Party.
- 16.2.4. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address in terms of clause 16.1.1.
- 16.2.5. All notices and correspondence in connection with this Agreement will be in the English language.
- 16.3. **Obligations of the Service Provider regarding B-BBEE Status**
- 16.3.1. The Service Provider is required to submit to the University, annually, a valid B-BBEE certificate issued by a South African National Accreditation System ("**SANAS**") accredited B-BBEE verification agency; or a Sworn Affidavit in the case of the Service Provider being an Exempted Micro Enterprise ("**EME**") or in the case of the Service Provider being a greater than or equal to 51% (fifty-one percent) Black Owned Qualifying Small Enterprise ("**QSE**").
- 16.3.2. In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the Broad Based Black Economic Empowerment Act and Codes of Good Practice as amended from time to time. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.
- 16.3.3. The Service Provider undertakes to notify and provide full details to the University in the event that there is:
- 16.3.3.1. a negative change to the Service Provider's B-BBEE rating, which is less than what its B-BBEE status was at the time of its appointment, including the impact thereof;

16.3.3.2. a corporate or internal restructure or change in control of the Service Provider which has impacted, or is likely to impact, negatively on the Service Provider's B-BBEE rating.

16.3.4. The Service Provider shall issue the notice and relevant details required in clause 16.3.3 within 30 (thirty) days from the date the event occurred.

16.3.5. Should there be any negative change to the Service Provider B-BBEE rating and should the Service Provider fails to comply with its reporting obligations in terms of this clause 16.3, University reserves the right to terminate this Agreement with immediate effect.

16.4. **Conflict of Interest**

16.4.1. The Service Provider shall immediately notify the University during the subsistence of the Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest.

16.4.2. The Service Provider agrees that it will immediately provide to the University such information as may be requested by the University for the purposes of checking for conflicts of interest, and the Service Provider warrants that such information so provided will in each instance be complete and accurate in all respects.

16.4.3. The Service Provider indemnifies the University against all losses, claims, penalties, fines, costs, damages, liabilities and expenses (including legal fees on the scale as between attorney and own client) as may be incurred or suffered by the University, arising out of a breach by the Service Provider of its obligations in terms of clauses 16.4.1 and 16.4.2.

16.4.4. Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to this Agreement, the University and the Service Provider shall take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.

16.4.5. Where it is not reasonably possible to so resolve such a conflict of interest concern, the University shall in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Service Provider shall not have any claim whatsoever against the University of any nature.

16.5. **Anti-Corruption Obligations**

Please initial here	<i>University</i>	<i>Service Provider</i>

16.5.1. The Service Provider agrees that in connection with the Services to be provided under this Agreement:

16.5.1.1. to comply with all applicable laws and regulations in the Republic of South Africa regarding anti-bribery and corruption; not to offer, promise, give, request, accept or receive bribes, including facilitation payments;

16.5.1.2. to disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;

16.5.1.3. to use its best endeavours to prevent bribes;

16.5.1.4. to use all reasonable endeavours to ensure that its Personnel, any third party agent, subcontractor, or other representative used in the performance of the Service Provider's obligations under this Agreement are aware of and comply with the provisions this clause 16.5.

16.5.2. The Service Provider agrees to indemnify, and keep indemnified, the University from and against all liabilities, costs, expenses, damages and losses and any professional costs and expenses suffered by, incurred by, or awarded against the University, arising out of or in connection with any failure by the Service Provider or its Personnel to comply with its obligations under this clause 16.5.

16.6. Entire Agreement

16.6.1. This Agreement as well as the Annexures contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.

16.6.2. This Agreement will prevail over, cancel and supersede all terms and conditions, whether written, oral or implied, not contained in this Agreement which the Service Provider may seek to incorporate in the Agreement in whatsoever manner.

16.7. No Representations

No Party may rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

16.8. Variation, Cancellation and Waiver

No addition to or variation of any clause of this Agreement (including this clause 16.8), consensual cancellation or novation of this Agreement and no waiver of any right arising

Please initial here	<i>University</i>	<i>Service Provider</i>

from this Agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by both Parties or their duly authorised representatives.

16.9. Indulgences

16.9.1. If either Party at any time breaches any of its obligations under this Agreement, the other Party (the "**Aggrieved Party**"):

16.9.1.1. may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach, unless the Aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to exercise the right. In particular, acceptance of late performance will be provisional only, and the Aggrieved Party may still exercise that right during that period;

16.9.1.2. will not be estopped (i.e. precluded) from exercising its rights arising out of that breach, despite the fact that it may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.

16.10. Assignment, cession and delegation

The Service Provider must not, without the prior consent of the University, cede or assign any of its rights or delegate or assign any of its obligations in terms of this Agreement to any other third party.

16.11. Applicable Law

This Agreement will be interpreted and implemented in accordance with the law of the Republic of South Africa.

16.12. Jurisdiction

Subject to the provisions contained in clause 13, the Parties consent to the jurisdiction of the South Gauteng High Court, Johannesburg.

16.13. Successors in title

Without prejudice to any other provision of this Agreement, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of a Party shall be bound by this Agreement.

16.14. Severability

Please initial here	<i>University</i>	<i>Service Provider</i>

If any provision of this Agreement is invalid, unenforceable or illegal, the remaining provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

16.15. **Costs**

Each Party will bear its own costs relating to the negotiation, preparation and signature of this Agreement.

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Please initial here	<i>University</i>	<i>Service Provider</i>

17. SIGNATORIES

Signed on behalf of the University: _____

Name: _____

Designation: _____

Date: _____

Place: _____

Signed on behalf of the Service Provider: _____

Name: _____

Designation: _____

Date: _____

Place: _____

Please initial here	<i>University</i>	<i>Service Provider</i>

ANNEXURE A – SCOPE OF WORK

[Content to be included based on tender documentation]

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Please initial here	<i>University</i>	<i>Service Provider</i>

ANNEXURE B – FORM OF EVENT

To be completed per Event under this Agreement

1. INTRODUCTION

- 1.1. The University and the Service Provider concluded an Agreement (“**Main Agreement**”) on [insert].
- 1.2. This Event Card is made pursuant to the terms of the Main Agreement between the Parties.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Event Card, unless the context otherwise requires, terms used but not defined in this Event Card shall have the meanings given to them in the Main Agreement.
- 2.2. All provisions of the Main Agreement, which are not expressly changed or excluded in this Event Card shall continue to bind the Parties in respect of this Event Card.

The University’s Representative’s name contact details:			
The Service Provider’s Representative’s name and contact details:			
Event Name:			
Event Date and Venue Required:			
Description of Event:			
Timing and Schedule of Events:			
The University Personnel:	Personnel Name	Role	Responsibility
The Service Provider Personnel:	Personnel Name	Role	Responsibility
Other Special Conditions:			
Please Sign here as acceptance of this Event Card :	For the University:		For the Service Provider:
	_____		_____
	Date		Date
	_____		_____
	Signature		Signature
	_____		_____
	Print Name		Print Name

ANNEXURE C – FEES

[Content to be included based on tender documentation]

DRAFT

Please initial here	<i>University</i>	<i>Service Provider</i>

ANNEXURE D – INSURANCE

[To be inserted]

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Please initial here	<i>University</i>	<i>Service Provider</i>